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No. 78-459

In the Supreme Court of the United States

OCTOBER TERM, 1978

BERNHARD ROSEE,

Plaintiff-Petitioner,

vs.

BOARD OF TRADE OF THE CITY OF CHICAGO, et al.,

Defendants-Respondents.

REPLY OF PETITIONER

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REPLY OF PETITIONER

The Board of Trade has misrepresented the facts and the law. The most important misrepresentations are as follows:

1. The "spurious trading card," referred to in footnote 5 of the Respondent Board of Trade's opposition, was introduced by Mr. Angle, attorney for the Board of Trade, in April-May of 1977, (see Rosee's Petition, page 5) and was argued before the Illinois Appellate Court on November 21, 1977. The Illinois Appellate Court refused to consider it. Furthermore, this same matter was submitted to the Illinois Supreme Court on May 4, 1978 and that Court denied Petitioner Leave to Appeal.

2. The impression that the Chicago Board of Trade "can do anything it desires" (see Respondent footnote 6) is manifested by what they have done to Petitioner for the

past 18 years. The law, as quoted by Mr. Angle, does not provide what he alleges it provides.

Ryan v. *Cudahy,* 157 Ill. 108, 122-24 (1895) only involved a controversy concerning "margin", which has no bearing on Petitioner's case.

3. The reference by Respondent Board of Trade (page 2, footnote 1) to *Rosee* v. *Board of Trade of the City of Chicago,* No. 63 C 1348, is misleading in that it is still pending on newly discovered evidence before Honorable Judge Will.

On December 16, 1977, Honorable Judge Will stated as follows:

> "THE COURT: The Account 35 entries. It appears now, I think that Account 35 was a fictional account." (Rept. of Proceedings, p. 35).
>
> "THE COURT: There wasn't any customer whose account, Account 35 really was." (*Id.,* p. 36).
>
> "THE COURT: No, as a matter of fact I have seen enough documents to satisfy me of two things. One, that the books of Baggot and Morrison were inaccurate, and two, that Account 35 was not yours." (*Id.,* pp. 65-66).
>
> "THE COURT: I am subsequently satisfied Account 35 was not yours." (*Id.,* p. 71).

As to the Commodity Exchange Commission and its successor, Commodity Futures Trading Commission, these agencies failed and refused to produce for Petitioner, Docket 93, which would have exposed the fraud against Petitioner many years ago.

On October 17, 1963, the Honorable Judge Hubert Will issued a subpoena duces tecum on the Commodity Exchange Authority, Department of Agriculture, to produce

among other documents, the documents contained in Docket No. 93. Up to this date, none of these agencies have produced the documents in Docket No. 93.

On June 24, 1976, Judge Hubert Will entered an order as follows:

> "This Court finds that the Rosee deficits referred to in this Court's opinion were contained in a document tendered to this Court by the government which this Court is now satisfied and finds to be false and fraudulent. The Rosee deficit figures included in this Court's opinion were based on the false and fraudulent document in question which showed those deficits."

4. *Rosee* v. *Berglund,* Civil No. 76-1721 (U.S. Court of Appeals for the District of Columbia) was dismissed *without prejudice* at the request of Petitioner because of the similarity in the above matter before Judge Will.

As to the Statement on page 1 of Respondent's Brief that this case is a simple accounting dispute, this is erroneous.

CONCLUSION

By reason of the foregoing, the petition for a writ of certiorari should be granted.

Respectfully submitted,

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